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Title: Cigarette maker's entry into settlement upheld

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Lead:

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A Franklin Circuit judge has upheld the 2004 deal that brought the maker of GT One cigarettes into the 1998 national tobacco settlement.

A group of cigarette companies that had previously agreed to the settlement sued Kentucky last year, saying the terms of General Tobacco's entry were unfair to competitors.

The deal gave General Tobacco 12 years to make \$242 million in back payments for the years when it wasn't part of the agreement. Competitors argued General Tobacco should have to pay full fees immediately, or that other makers should have 12 years to make their payments.

"Given the size of GT's back payment and the fact that it serves the purposes of the MSA (master settlement agreement) to have the amount paid in full, the 12-year time period afforded GT is entirely reasonable," Judge Roger Crittenden wrote.

Among the cigarette makers objecting to the General Tobacco deal were Liggett Group and the Bowling Green-based Commonwealth Brands.

While the General Tobacco challenge could have been raised in any of the 46 states in the master agreement, the companies said they sued in Kentucky because one plaintiff, Commonwealth Brands, is headquartered in the state.

The agreement limits tobacco marketing and requires companies to make annual payments to states as compensation for the cost of treating ill smokers.

"We're very happy with the ruling, and it'll enable us to continue to bring in revenue streams for the people of the commonwealth of Kentucky by enforcing the master settlement agreement," Deputy Attorney General Pierce Whites said.

A Liggett spokeswoman declined to comment yesterday.

One claim made by the competitors was that General Tobacco could unfairly receive credits for any claims it might have to pay in four states that made individual settlements with tobacco companies. Crittenden rejected arguments that other participating companies would be "double-taxed" because they wouldn't get the credits.

Crittenden said the deal to give credits to General Tobacco could be extended to other participating manufacturers.

Proponents of a \$4-per-carton fee being proposed by Gov. Ernie Fletcher seized on that part of Crittenden's ruling, saying it negates similar "double-taxation" arguments being made against that proposal.

Participants in the settlement are opposing the fee, saying they'd be "double-taxed" by having to pay both the Kentucky assessment and about \$4 a carton into the master settlement fund for sales in the state.

Crittenden's ruling that General Tobacco's credits against its master settlement payment could be offered to other cigarette makers in the settlement "makes the case for us," said Bob Rowland, a spokesman for a group of nonparticipating manufacturers. Participating companies could receive a credit on their master settlement payments for what they would pay on a Kentucky assessment, he said.

Whites said the attorney general's tobacco litigation team is still reviewing whether Crittenden's ruling would solve claims of "double taxation" by participating manufacturers regarding Fletcher's proposed fee.

Generally, Whites said Crittenden's ruling shows the need for the state to file suit asking a judge to clarify whether the \$4 fee would breach the master settlement agreement, which brings about \$100 million a year to the state. Fletcher has said the \$4-per-carton fee could produce an additional \$150 million annually.

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